

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
KENT COUNTY COURTHOUSE
DOVER, DELAWARE 19901
PHONE: (302) 739-4618**

**CHARLES W. WELCH, III
JUDGE**

April 5, 2011

Mr. Ousmane Seck
260 Webbs Lane
Dover, DE 19904

RE: Capital One Bank (USA), N.A. v. Ousmane Seck
C.A. No.: CPU5-10-001367

Decision on Motion to Vacate Judgment

Dear Mr. Seck:

The court is in receipt of your motion to vacate judgment for the above-referenced matter that was filed on February 25, 2011.¹ Please be advised that after a careful review of your motion and the file, your motion is denied.

As you know, a judgment was entered against you in the above-referenced matter on February 23, 2011, when you failed to appear for the hearing on the plaintiff's motion for summary judgment. In your motion to vacate judgment, you apologize for your absence and state that in your mind the motion was scheduled for February 28, 2011.² Therefore, you request that the judgment that was entered against you for this matter be vacated.

Once a judgment has been entered, a party must file a motion pursuant to Court of Common Pleas Civil Rule 60(b) to vacate the judgment in order to reopen the case. A

¹ The defendant actually filed the motion as a motion to vacate default judgment. However, the judgment entered against him resulted pursuant to a motion for summary judgment filed by the plaintiff. Therefore, the court will consider the defendant's motion to be a motion to vacate judgment.

² In his motion, the defendant indicates that he was absent from the pre-trial conference for this case. However, there was also a hearing for the plaintiff's motion for summary judgment that was scheduled at the same time. Therefore, the court will accept the defendant's excuse for his absence for both the pre-trial conference and the hearing for the plaintiff's motion for summary judgment.

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party moving to vacate a judgment must establish three elements before the motion will be granted: (1) that the [movant's] conduct was that of a reasonably prudent person; (2) that there is the possibility of a meritorious defense; and (3) that no substantial prejudice will be suffered by the non-moving party. *Wilson v. Sabo*, 1999 WL 1847439, at *2 (Del. Com. Pl.) (citing *Keith v. Melvin L. Joseph Constr. Co.*, 451 A.2d 842, 846 (Del. Super. 1982)).

The court is not satisfied that your conduct was that of a reasonably prudent person when you missed court. On its face, your motion states that you did not appear for the plaintiff's motion for summary judgment for this matter because you got your dates mixed up. Delaware courts have held that simply forgetting or mixing up court dates is not conduct of a reasonably prudent person. *See Demusz v. Smith*, 2007 WL 549906, at *2 (Del. Com. Pl.).³ The court need not consider the second and third elements mentioned above because you have failed to satisfy the first element. *See Lee v. Charter Commc'ns VI, LLC*, 2008 WL 73720, at *2 (Del. Super.). Therefore, your motion is denied.

IT IS SO ORDERED.

Sincerely,



Charles W. Welch, III

CWW:mek
pc: Stephen Doughty, Esq.

³ *Demusz* involved a motion to vacate a default judgment. However, the standard used to review motions to vacate default judgments is the same as the one used to review motions to vacate judgments.